Deery v. *Hamilton*, 41 Ia. 16. In accordance, however, with the rule that there is no such obligation to repay money paid under a mistake of law, one lending money because of a mistaken notion as to an executor's authority to borrow, cannot recover. *Merchants' Nat'l Bank* v. *Weeks*, *supra*.

QUASI-CONTRACTS — RIGHTS ARISING FROM MISTAKE OF FACT — PAYMENT IN ANTICIPATION OF A NON-EXISTING LEGAL LIABILITY. — K. & Co. in New York notified the plaintiff in London that they had credited a certain amount to a third party, and requested him to recoup them, according to their prior agreement. Before making any payments to the third party K. & Co. became insolvent. After the insolvency, the plaintiff, in anticipation of his legal liability, deposited the requested amount to K. & Co.'s account with the defendants in London. Later that day he learned of the insolvency and notified the defendants. They had merely made an entry of the credit to the account of K. & Co. K. & Co. were largely indebted to the defendants, who refused to refund to the plaintiff. *Held*, that as the plaintiff paid the money under a mistake of fact, he can recover. *Kerrison* v. *Glyn, Mills, Currie & Co.*, 26 T. L. R. 37 (Eng., K. B. D., Oct. 28, 1909).

Where money has been paid under a mistake of fact, an action for money had and received will lie. *McLean County Bank* v. *Mitchell*, 88 Ill. 52. And the payee is liable to refund, even though in ignorance of the mistake he has paid the money to another. *Continental Caoutchouc, etc., Co.* v. *Kleinwort Sons & Co.*, 20 T. L. R. 403. Though the ground for recovery is usually alleged to be in quasi-contract, the underlying principle of the relief given is equitable. In fact the case is analogous to those where money is received for a particular purpose which fails. See *Cutler* v. *Am. Exchange Nat. Bank*, 113 N. Y. 593. There the depositary becomes liable as a constructive trustee. *Stumore* v. *Campbell & Co.*, [1892] 1 Q. B. 314. And yet an action on the common counts lies. *Ashpitel* v. *Sercombe*, 19 L. J. Exch. 82. The mistake must be as to a material fact. *Chambers* v. *Miller*, 13 C. B. N. S. 125. And when the plaintiff paid, he must not have doubted his liability. *McArthur* v. *Luce*, 43 Mich. 435. His claim rests on the fact that the defendant is being unjustly enriched at his expense. To prove that the enrichment is at his expense, the plaintiff must show a failure of consideration. *Taylor* v. *Hare*, 1 B. & P. N. R. 260. And to prove that it is unjust, the plaintiff must show that he was neither legally nor morally bound to pay. *Franklin Bank* v. *Raymond*, 3 Wend. (N. Y.) 69. It is submitted that the above theories are properly applicable to the principal case, which is thoroughly in accord with public policy.

LANDLORD AND TENANT — RENT — STATE INTERFERENCE WITH BENEFICIAL USE OF PREMISES. — Premises were leased for occupation "as a saloon and not otherwise." During the term the sale of intoxicating liquor was prohibited by law. The lessee continued to occupy the premises. The lessor sued for rent which accrued after the prohibitory law had gone into effect. *Held*, that he can recover. *O'Byrne* v. *Henley*, 50 So. 83 (Ala.).

No rent need be paid after a natural catastrophe has totally destroyed the leased premises. *Graves* v. *Berdan*, 26 N. Y. 498. *Contra*, *Izon* v. *Gorton*, 5 Bing. N. Cas. 501. The same is true if the state, by eminent domain, takes title to the whole of the premises. *Corrigan* v. *City of Chicago*, 144 Ill. 537. After either of these events, the estate demised, out of which the rent is to issue, no longer exists. But by the weight of authority physical damage short of total destruction does not alter the lessee's liability for rent. *Hilliard* v. *The New York & Cleveland Gas Coal Co.*, 41 Oh. St. 662. By the minority view, the rent under such circumstances is apportioned, on the theory that the diminution of the beneficial use of the premises causes a failure of consideration for the rent. See *Wattles* v. *South Omaha Ice & Coal Co.*, 50 Neb. 251. But since a lease is not a contract of continuing performance, but the grant of an estate for years, there